

DOCKET FILE COPY ORIGINAL

RECEIVED

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 11 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
)

Implementation of the )  
Telecommunications Act of 1996: )

CC Docket No. 96-115

Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other Customer Information )  
)

**COMMENTS OF  
INTELCOM GROUP (U.S.A.), INC.**

Cindy Z. Schonhaut  
Vice President, Government Affairs  
INTELCOM GROUP (U.S.A.), INC.  
9605 East Maroon Circle  
Englewood, CO 80112  
(303) 575-6533

Albert H. Kramer  
Robert F. Aldrich  
DICKSTEIN, SHAPIRO & MORIN, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20554  
(202) 828-2236

Attorneys for IntelCom Group (U.S.A.),  
Inc.

June 11, 1996

Filed for record  
1996 JUN 11  
026

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

\_\_\_\_\_  
In the Matter of )

Implementation of the )  
Telecommunications Act of 1996: )

CC Docket No. 96-115

Telecommunications Carriers' Use )  
of Customer Proprietary Network )  
Information and Other Customer Information )  
)

**COMMENTS OF  
INTELCOM GROUP (U.S.A.), INC.**

The IntelCom Group (U.S.A.), Inc. ("ICG") submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-221, released May 17, 1996 ("Notice").

**STATEMENT OF INTEREST**

ICG is one of the largest providers of competitive local access services in the United States. Using fiber optics and advanced communications technology, ICG currently operates networks in 34 cities, including a significant presence in major metropolitan areas of California, Colorado, and the Ohio Valley.

ICG provides services both to carriers and to end users, and increasingly offers switched as well as dedicated services to its customers. With the emergence of new competitive opportunities under the Telecommunications Act of 1996, Pub. L. No.

104-104, 110 Stat. 56 (1996) ("the 1996 Act"), ICG is seeking to expand its offerings of local exchange and exchange access services.

### SUMMARY

In applying the provisions of Section 222 of the Communications Act, 47 U.S.C. § 222, regarding customer proprietary network information ("CPNI"), the Commission should seek to carry out the intent of Congress to "balance both competitive and consumer privacy interests with respect to CPNI." Joint Statement of Managers, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 205. In addition, the Commission should recognize that it is appropriate in some areas to strike the balance between these interests differently for competitive local exchange carriers ("CLECs") than for incumbent local exchange carriers ("ILECs"). As discussed below, while all competitors should have equal opportunities and limitations regarding access to information about ILEC customers, who have had no choice of local service provider, the same competitive concern does not apply to information about CLEC customers, who have specifically chosen a particular competitive carrier.

Indeed, if the Commission's application of CPNI regulations to CLECs inhibits carriers such as ICG from effectively marketing additional services to their own customers, a key objective of the Act – the promotion of local service competition – could be thwarted. Moreover, the need for privacy protection is not exactly the same for CLEC customers as it is for ILEC customers.

Therefore, the Commission should forbear from applying the CPNI use restriction to CLECs. At a minimum, the Commission should apply less stringent service classification, customer approval, and other regulations to CLECs as detailed below.

I. THE CPNI USE RESTRICTION

The CPNI use restriction of Section 222(c)(1), on which the Commission seeks comment, is based in part on concerns unique to the ILECs, and should not become the basis for heavy-handed regulation of CLECs. Part of the rationale for regulating the use of CPNI by ILECs is to prevent the ILEC from gaining an unwarranted advantage in competitive market sectors by using CPNI that was gathered from customers in the absence of effective local exchange competition. All competitors should have an equal opportunity to use this information for marketing purposes. Thus, the ILEC should not be able to use that information to market a competitive product or service, except on the same conditions (i.e., customer consent) that are applicable to other competitors seeking to use that same information.<sup>1</sup>

The same competitive concerns do not apply to competitive carriers. A CLEC does not gain an unwarranted competitive advantage from using, for its own marketing purposes, information that was gathered from customers who specifically chose the CLEC as their service provider. Indeed, the purposes of the Act to promote local service competition are affirmatively served by allowing CLECs to use CPNI about their

---

<sup>1</sup> Of course, CPNI that is gathered from a competitor because the ILEC provides network elements or other services needed by the competitor must not be used to market services to the competitor's customers. 47 U.S.C. § 222(a), (b). CPNI obtained from a joint customer of the ILEC and the competitor may not be used by the ILEC for marketing purposes without the customer's consent. 47 U.S.C. § 222(c)(1).

customers (without disclosing the CPNI to other parties) for the purpose of marketing additional services offered by the CLEC. Marketing to existing customers is an important means by which new entrants can grow their business and fulfill the competition mandate of the Act.

Privacy concerns also do not apply with the same force to competitors as to ILECs. An ILEC's customer may have a legitimate privacy interest in being free from unsolicited marketing contacts by the ILEC. After all, the ILEC's customers generally have not freely consented to become the ILEC's customers: they have had no choice. A CLEC's customers, on the other hand, have affirmatively and deliberately chosen the CLEC. Therefore, it can legitimately be inferred that a CLEC's customers do not object to being contacted by the CLEC for purposes of marketing other products and services.

Accordingly, the Commission should not apply overly stringent CPNI use restrictions to CLECs. ICG believes that the a distinction should be drawn between use and disclosure in this regard. While customers may have a legitimate interest in preventing a CLEC from disclosing CPNI to other parties, for the reasons stated above the privacy concerns raised by a CLEC's use of its own customers' CPNI are substantially less than the concerns raised by an ILEC's use of CPNI.

## II. FORBEARANCE

There are a number of steps the Commission could take in crafting CPNI regulations that would help minimize unnecessary burdens on CLECs. One approach would be simply to forbear from applying use restrictions to CLECs. ICG believes the

discussion above establishes that enforcement of CPNI use restrictions (as opposed to disclosure restrictions) against CLECs is not necessary to ensure just and reasonable practices, or to protect consumers, and that forbearance from imposing the restrictions on CLECs is in the public interest. Accordingly, the forbearance criteria of Section 10 of the Act are satisfied with respect to the application of CPNI use restrictions to CLECs. 47 U.S.C. § 160(a).

### III. SERVICE CLASSIFICATIONS

If the Commission does apply CPNI use restrictions to CLECs, the regulations should be crafted to minimize unnecessary regulatory burdens. In making distinctions among "telecommunications services" for purposes of Section 222(c)(1), ICG believes the Commission should apply less stringent service classification rules to CLECs than to ILECs. The terms "telephone exchange service" and "telephone toll service" are not necessarily even clearly applicable to the services offered by CLECs. For example, a CLEC might offer a special access service that may be used by its end user customer to originate either long distance or local exchange calls. CLECs should be allowed to treat this service as a single "telecommunications service," so that the CLEC can freely use the information in marketing to customers to expand the volume of calls using the service.

On the other hand, ICG does not believe the same flexibility should be permitted to ILECs, given the more substantial competitive and privacy concerns that apply to CPNI gathered by ILECs.

#### IV. CUSTOMER APPROVAL OF CPNI USE

To the extent that CLECs are subject to use restrictions that prevent marketing of additional services to existing customers, the Commission should permit such use of CPNI upon oral approval by the customer. An oral approval standard is permitted by Section 222(c)(1). The significant factor in interpreting the various customer approval provisions of Section 222 is that, in two of these provisions, very similar language is used. The Section 222(c)(1) language restricting use of CPNI except with "the approval of the customer," is essentially the same as the Section 222(d)(3) language that allows disclosure or use of CPNI in an inbound telemarketing context if "the customers approves." The latter provision clearly contemplates oral approval. By contrast, Section 222(c)(2) provides for disclosure of CPNI "upon affirmative written request." The use of different terminology in Section 222(c)(2) and the express requirement that the request be "written" suggests that the term "approval" in Section 222(c)(1) is more indeterminate and is subject to Commission discretion in its application to different circumstances. Thus, the Commission can and should allow oral approval in the case of CLECs, while requiring written approval in the case of ILECs.

#### V. OTHER REQUIREMENTS

Other requirements also should apply less stringently to CLECs than to ILECs, reflecting the lesser degree of competitive and privacy concerns supporting restricted use of CPNI. For example, if oral approval of CPNI use is allowed for CLECs, the burden should not be on CLECs to prove that a customer orally authorized use of CPNI

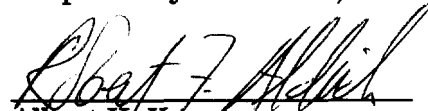
to market another service. Further, there should be no limits on how long CLECs' CPNI authorizations are valid, how often customers may be contacted, or whether or not CPNI authorizations may be partial. Finally, no special computer safeguards are needed for CLECs. Such requirements are unnecessarily onerous as applied to CLECs, and would be an invitation to nuisance litigation.

### CONCLUSION

For the foregoing reasons, the Commission should not impose burdensome restrictions on CLECs' use of their own customers' CPNI for the CLEC's own marketing purposes. While ILECs should be subject to stricter requirements because their customers have had no choice of carriers, the market can be relied upon to adequately police the marketing behavior of CLECs.

Cindy Z. Schonhaut  
Vice President, Government Affairs  
INTELCOM GROUP (U.S.A.), INC.  
9605 East Maroon Circle  
Englewood, CO 80112  
(303) 575-6533

Respectfully submitted,

  
Albert H. Kramer  
Robert F. Aldrich  
DICKSTEIN, SHAPIRO & MORIN, L.L.P.  
2101 L Street, N.W.  
Washington, D.C. 20554  
(202) 828-2236

Attorneys for IntelCom Group (U.S.A.),  
Inc.

June 11, 1996